to some principles of justice. For their protection a permanent control by Congress with a cessation of all actual regulation is a mere form without substance, so that from the point of view of the governed expediency requires that the President have governmental power in the interval between congressional regulations.

VOID, ILLEGAL, OR UNENFORCEABLE CONSIDERATION. — In a recent article Mr. William P. Rogers discusses the various phases of contracts in which a part of the consideration furnished by one party is void and part valid. *Void, Illegal, or Unenforceable Consideration*, 17 Yale L. J. 338 (March, 1908). The writer logically begins his discussion with Pigot's Case,[1] where it was said that if some of the covenants of an indenture are unlawful and others lawful, the latter will stand good. This appears to be the earliest case on the subject and has led to considerable conflict of authority.

If we suppose that A agrees to pay B $100 in return for B's promise to do a lawful as well as a criminal act, it is conceded that the latter promise will vitiate the entire contract, no matter which of the promises has been performed.[2] If we suppose that B has promised to do a lawful act and one that is unlawful but not criminal or *malum in se*, the result may be different. It is true that B's unlawful promise being absolutely void can form no consideration for A's executory promise, and that the latter, being by hypothesis indivisible, falls to the ground through failure of consideration; and since A is under no obligation it is impossible to enforce B's promise.[3] But if A has fully performed his part of the agreement, it is generally held that, though B's unlawful promise is still void, A may enforce the lawful promise of B, since there is now ample consideration for such promise and A's promise, being executed, needs no consideration. B on the other hand, whether he performs or not, will never be able to enforce A's promise, supposing it to be executory, since neither his promise nor its performance, which is against public policy, can support A's promise.[4] A similar distinction between executory and executed contracts is sometimes made when B, who is already under a contract duty to C, makes a subsequent promise to A to perform such contract, in return for A's promise to pay. It may well be that such executory contract is of no effect because B has furnished no consideration for A's promise,[5] but if A actually pays B for the subsequent promise he may hold B, though, of course, B, whether he performed or not, would never be able to compel A to perform.[6]

Passing now to contracts in which part of the consideration is unenforceable merely because of some defense, such as the statute of frauds, the learned writer reaches the conclusion that A should be allowed to hold B upon his lawful and enforceable promise, even though his own promise remains executory. A promise unenforceable because of the statute of frauds is generally considered as merely subject to a defense and in no sense illegal, and such a promise is sufficient to make A's promise binding.[7] Since the contract is therefore valid, Mr. Rogers is undoubtedly correct in his conclusion that A may recover for a breach of the promise which is not subject to the defense of the statute of frauds without himself performing, provided, of course, such non-performance does not itself constitute a breach. It must also follow that B should be allowed the same right against A, for we have seen that B's promise can only be enforced when A is also bound. In accord with this view it has been held that when one party to a contract is protected by the statute of frauds he may nevertheless sue the other party for breach of his valid promise.[8]

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[1] 11 Reports 27 *a*.
[2] See United States *v.* Bradley, 10 Pet. (U. S.) 343.
[3] Kearny *v.* Whitehaven Colliery Co., [1893] 1 Q. B. 700.
[4] Widoe *v.* Webb, 20 Oh. St. 431.
[5] See Wald's Pollock, Contracts, Williston's ed., 207.
[6] *Ibid.* 208.
[7] 12 HARV. L. REV. 424.
[8] Justice *v.* Lang, 42 N. Y. 493.

While Mr. Rogers undoubtedly expresses the weight of authority, the law is by no means settled, and, as he himself admits, no general rules can be laid down against which authority cannot be cited.

ACQUISITION OF STATE LAND BY THE FEDERAL AUTHORITIES, THE. *Acland Giles.* Discussing the power of the Australian federation to take land by eminent domain from the Australian states. 5 Comm. L. Rev. 49.

ARMSTRONG COMMITTEE'S LEGISLATION, A STATEMENT CONCERNING MR. SAMUEL B. CLARKE'S ARTICLE ENTITLED "DEFECTS OF THE, RELATING TO THE DIVIDENDS OF MUTUAL LIFE INSURANCE POLICY-HOLDERS," AND MR. JAMES MCKEEN'S ANSWER. *William Trenholm.* 42 Am. L. Rev. 1.

ASSUMPSIT, LIMITATIONS OF THE ACTION OF, AS AFFECTING THE RIGHT OF ACTION OF THE BENEFICIARY (Continued). *Crawford D. Hening.* 56 U. P. L. Rev. 73.

CAPTURE OF NON-OFFENDING PRIVATE PROPERTY UPON THE HIGH SEAS DURING WAR, WOULD IMMUNITY FROM, BE IN THE INTEREST OF CIVILIZATION? *C. H. Stockton.* Maintaining that in some cases immunity might not be advisable. 1 Am. J. of Int. L. 930.

CITIZENSHIP AND ALLEGIANCE IN CONSTITUTIONAL AND INTERNATIONAL LAW. *W. W. Willoughby.* 1 Am. J. of Int. L. 914.

CONSIDERATION, VOID, ILLEGAL OR UNENFORCEABLE. *W. P. Rogers.* 17 Yale L. J. 338. See *supra.*

CONSTITUTION OF THE UNITED STATES, THE ELEVENTH ARTICLE OF AMENDMENT TO THE. *William G. Guthrie.* 8 Colum. L. Rev. 183. See *supra,* p. 527.

CONSTITUTION, THE THEORY AND PRACTICE OF THE. *Thos. B. Flint.* Showing that the Canadian government is essentially like that of Great Britain. 28 Can. L. T. & Rev. 114.

COURTS FROM THE REVOLUTION TO THE REVISION OF THE CIVIL CODE, THE. *William H. Loyd, Jr.* A history of the development of Pennsylvania courts. 56 U. P. L. Rev. 88.

DEPARTMENT OF STATE, THE HISTORY OF THE. I. THE DEPARTMENT OF FOREIGN AFFAIRS. *Gaillard Hunt.* 1 Am. J. of Int. L. 867.

EXPATRIATION BY MARRIAGE, WOMAN'S. *C. A. Hereshoff Bartlett.* Discussing the subject generally and maintaining in particular that a United States statute allowing woman's expatriation by marriage is unconstitutional. 33 L. Mag. & Rev. 150.

FILIPINO PEOPLE, THE PROGRESS OF THE, TOWARD SELF-GOVERNMENT. *E. W. Kemmerer.* Historical sketch of conditions before, during, and after Spanish control. 23 Pol. Sci. Quar. 47.

GIFTS TO CHARITIES. SECTION XI, ACT APRIL 26TH, 1855. *Anon.* Collecting the Pennsylvania authorities. 12 The Forum 167.

INSURANCE COMPANIES, DISTRIBUTION OF SURPLUS BY. *Herbert H. Reed.* Statistics showing that life insurance premiums are not equitably calculated. 42 Am. L. Rev. 12.

INTERNATIONAL CONFLICTS, CAN ANY RIGHT OF DIRECT CITATION BE GIVEN TO A STATE IN? *Jacques Dumas.* Maintaining that nations should be compelled to arbitrate. 17 Yale L. J. 365.

LAST CLEAR CHANCE, THE DOCTRINE OF. *George W. Payne.* Summary of the doctrine. 66 Cent. L. J. 215.

LEGISLATION, THE METHODS AND CONDITIONS OF, IN OUR TIME. *James Bryce.* Maintaining that the legislature should be relieved by having the power to delegate its powers and by the use of scientific methods. 8 Colum. L. Rev. 157; 20 Green Bag 111.

LIFE TENANTS AND REMAINDERMEN, RIGHTS OF, TO DISTRIBUTIONS OF STOCK AND CORPORATE ASSETS MADE BY CORPORATIONS TO THEIR STOCKHOLDERS. *Carroll G. Walter.* 42 Am. L. Rev. 25. See 20 HARV. L. REV. 147.

MASTER, THE EFFECT OF LEGISLATION REQUIRING THE, TO GUARD DANGEROUS MACHINERY. *George W. Payne.* 66 Cent. L. J. 157.

OIL TRUST AND GOVERNMENT, THE. *Francis Walker.* Abstracts of the reports of the Bureau of Corporations. 23 Pol. Sci. Quar. 18.

PEACE CONFERENCE, THE SECOND. II. *A. H. Charteris.* Dealing with the proceedings concerning neutrals and the convention for arbitration. 19 Jurid. Rev. 347.

REPRESENTATIVE GOVERNMENT, THE FUTURE OF. *F. N. Judson.* Maintaining that faults in representative government cannot be cured by increasing the number of elective offices. 2 Am. Pol. Sci. Rev. 185.

ROMAN LAW AND MOHAMMEDAN JURISPRUDENCE. III. *Theodore P. Ion.* 6 Mich. L. Rev. 371.

SUBTERRANEAN PERCOLATING WATER, SOME OBSERVATIONS ON THE RIGHTS OF LANDOWNERS IN. *Sumner Kenner.* Digesting the cases. 66 Cent. L. J. 194.

SURRENDER CLAUSE, EFFECT OF, IN OIL LEASE. *Berkeley Minor, Jr.* Discussing the various theories. 14 The Bar 26.

"TURNTABLE CASES," Should the Doctrine of the, Holding Railroad Corporations Liable for Injuries to Trespassing Children, be Extended so as to Make Land-Owners Liable for Injuries Caused to Trespassing Children by Unguarded Ditches, Ponds, etc. *Sumner Kenner.* 66 Cent. L. J. 137.

II. BOOK REVIEWS.

In 21 HARV. L. REV. 228 (January, 1908) we printed a review of the second edition of Abbott's Practice and Forms, by Carlos C. Alden, published by Baker, Voorhis and Co., New York. In our review of this work criticism was made of the omission of ten of the most recently decided New York cases. Our attention has been called by the editor of the second edition to the fact that of these ten cases four were not omitted, but had been actually cited a total of eight times. In this matter we acknowledge our error, though we feel that it is possible that two of the cases were not cited in every section where they should have appeared. Of the remaining six cases the editor assures us that in his opinion five of them involve matters not within the scope of the work. On this point we do not feel convinced that our review was wrong, but we are glad to recognize the existence of a firm dissent from our criticism. For the injustice in our admitted error we feel the deepest regret.

THE LAW AND CUSTOM OF THE CONSTITUTION. By Sir William R. Anson. In three volumes. Vol. II. The Crown. Part I. Third Edition. Oxford: At the Clarendon Press. 1907. pp. xxvii, 283. 8vo.

Since the last edition of this work was published, Sir William Anson has been active in public life. Entering Parliament as a member for Oxford University in 1899, he was soon made Secretary to the Board of Education, and had the principal charge of carrying through the Education Act of 1902. No doubt these duties have delayed the preparation of another edition of his book, but students of English government will welcome even this instalment of a new edition, for the work is far the best that exists in its own field. That field cannot be easily defined, but the author has indicated it well in the title of his book, "Law and Custom of the Constitution." In most governments it is easy to distinguish the legal structure from the functions of the organs of the state; but in England this is not so, because the exercise of authority is limited, and even created, by conventions of the constitution which have no legal basis. In the English government, as in a rotary storm, structure and functions cannot be kept distinct. So far, however, as it is possible to separate them, Sir William Anson's book deals with the former, that is, with the law, and with those customs which may be said to form a permanent part of the British constitution, including such things as the responsibility of the ministers, and even the procedure for making appropriations in the House of Commons. It is worth while to keep an authoritative work in such a field well up to date.

In the subjects treated by the present volume — covering as it does the Crown with its councils, the ministers, and the departments of government — there has not been a great deal of change in the dozen years since the last edition came out. Perhaps the most striking change has been that in the Board of Education itself. But the new edition does much more than merely note the results of recent legislation. In one or two respects the book has been largely reconstructed. The author has abandoned his division of the public offices into executive and regulative; that is, into those which deal with the